

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Plaintiff, a state prisoner proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Before the court is the magistrate judge's Report and Recommendation ("Report"), recommending that Defendants' Motion for Summary Judgment (ECF No. 57) be granted and that this case be dismissed. (ECF No. 68). Plaintiff timely filed objections to the Report. (ECF No. 70).

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court need not conduct a de novo review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In that case, the court reviews the Report only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

As set forth above, Plaintiff timely filed objections to the Report. (ECF No. 70). The magistrate judge recommends that the court dismiss this action because Plaintiff did not exhaust

his administrative remedies pursuant to the Prison Litigation Reform Act (“PLRA”). (Report at 7). Alternatively, the magistrate judge recommends that the court dismiss this action on the merits and because Defendant is entitled to qualified and Eleventh Amendment immunity. (Report at 7, 11-13). In his objections, while Plaintiff addresses the recommendation regarding dismissal of the action on the merits and because of qualified immunity, Plaintiff does not address the recommendation that this action should be dismissed for failure to exhaust his administrative remedies or that the claims brought against Defendant in his official capacity should be dismissed on the basis of Eleventh Amendment immunity. Therefore, the court has reviewed these recommendations for clear error. The court has thoroughly reviewed the Report and Plaintiff’s objections and finds no reason to deviate from the Report’s recommended disposition.

Accordingly, the court adopts the Magistrate Judge’s Report (ECF No. 68) and incorporates it herein. It is therefore **ORDERED** that Defendants’ Motion for Summary Judgment (ECF No. 57) is **GRANTED**, and Plaintiff’s case is **DISMISSED**. It is further **ORDERED** that Defendant’s request to consider the Complaint as a strike pursuant to 28 U.S.C. § 1915(g) is **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

June 8, 2015
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.